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April 29, 2010

Dear Tribal Leaders and Interested Parties:

Attached for your review and consideration is a revised draft of Publication 146, *Sales to American Indians and Sales on Indian Reservations*. While reading the draft of this publication, please keep in mind that this is only a draft version and additional revisions may be made before the final version is released.

Board of Equalization (BOE) staff have met with tribal leaders and interested parties seeking their input regarding revisions to Publication 146. Meeting discussions and written comments submitted have been taken into consideration in drafting the revised draft of Publication 146.

This draft is a clean copy of the revised publication and does not illustrate revisions to the publication since the November 13, 2009 draft. Also available on our website is a draft of the revised publication that illustrates revisions to the publication since the prior draft.

To assist reviewers, a matrix summarizing all written comments received is available on our website. This matrix indicates the extent to which each comment was included in the revised draft of Publication 146. In the event a comment was not included in the draft of the publication, it provides a reason as to why the comment was not included. Included with the matrix is a copy of each of the written comments received.

You are welcome to submit written comments regarding the revisions to Publication 146 at any time. Written comments may be submitted to the following:

Mr. Bradley Miller
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Fax: 916-322-0187
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I look forward to your comments and suggestions regarding the revised draft of Publication 146.

Sincerely,

James C. Kuhl, Sr., Supervisor
Audit and Information Section

JCK:bem

SALES TO AMERICAN INDIANS AND SALES ON INDIAN RESERVATIONS

Publication 146

Pending draft revision

Preface

This Board of Equalization (BOE) publication is intended primarily as a guide to the proper application of California's Sales and Use Tax Law to transactions occurring in Indian country in California that involve at least one non-Indian party. It is also intended to help Indian purchasers understand how the Sales and Use Tax Law generally applies to their purchases, as well as to provide some general information on other tax and fee programs administered by the BOE. We use the term "Indian" in this publication since that is the term used in state and federal law for "American Indian."

There are numerous federal and state laws, in addition to opinions issued by the courts, that impact the application of BOE-administered taxes and fees to transactions involving Indians. In administering the Sales and Use Tax Law in a fair and uniform manner, the BOE is subject to, and limited by, all pertinent laws and regulations, including Public Law 83-280, the provisions of the California Revenue and Taxation Code, and opinions issued by the federal courts in *Bryan v. Itasca County* (1976) 426 U.S. 373, 48 L.Ed.2d 710, *Moe v. The Confederated Salish and Kootenai Tribes of the Flathead Reservation* (1976) 425 U.S. 463, 48 L.Ed.2d 96, *Washington v. Confederated Tribes of the Colville Indian Reservation* (1980) 447 U.S. 134, 65 L.Ed.2d 10, *Oklahoma Tax Commission v. Chickasaw Nation* (1995) 515 U.S. 450, 132 L.Ed.2d 400, *Cabazon Band of Mission Indians v. Wilson* (9th Cir. 1994) 37 F.3d 430, and *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma* (1991) 498 U.S. 505, 112 L.Ed.2d 1112. The BOE is committed to working cooperatively with tribal leaders to respect tribal sovereignty and promote tax compliance in California.

The applicable laws, regulations, and court decisions do not grant the state of California general authority to impose sales and use taxes on Indian tribes or tribal members in Indian country. Therefore, certain on-reservation sales to Indians and certain other transactions in Indian country may not be subject to California sales or use tax. While there is no general sales tax exemption for sales to Indians, this publication explains how sales or use tax generally applies to sales or purchases in Indian country. This publication also describes the types of documentation that retailers and Indian purchasers need to maintain in order to qualify for an exemption from paying sales or use taxes with respect to certain transactions. It also provides information on certain other applicable California taxes and fees.

Before you read other parts of this publication, be sure to read chapter 1, "Key Definitions." It contains important information that will help you as you review the rest of the publication (see page 7).

This publication supplements our basic sales tax publication 73, *Your California Seller's Permit*. Publication 73 includes general information about obtaining a permit, using a resale certificate, reporting and paying sales and use taxes, discontinuing a business, and keeping records.

All BOE publications, forms, regulations, and much more information regarding all of our programs, are available on our website at www.boe.ca.gov.

If you have a general tax question, please call our Taxpayer Information Section and speak with a customer service representative. Representatives are available weekdays from 8:00 a.m. to 5:00 p.m. (Pacific time),

except state holidays. Please call 800-400-7115, TDD/TTY: 800-735-2929. In addition to English, assistance is available in other languages.

The State of California Franchise Tax Board also offers a printed brochure, publication 674, *Frequently Asked Questions About the Income Taxation of Native Americans*. The publication is available from their website at www.ftb.ca.gov and by calling their information center, Monday through Friday, from 7:00 a.m. until 6:00 p.m. (Pacific time). Please call 800-852-5711 within the United States, or 916-845-6500 outside the United States.

We welcome your suggestions for improving this or any other of our sales and use tax publications. Please provide your comments or suggestions directly to:

Audit and Information Section, MIC:44

State Board of Equalization

P.O. Box 942879

Sacramento, CA 94279-0044

Note: *This publication summarizes the law and applicable regulations in effect when the publication was written, as noted on the cover. However, changes in the law or in regulations may have occurred since that time. If there is a conflict between the text in this publication and the law, decisions will be based on the law and not on this publication.*

Draft

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To contact your Board Member, see www.boe.ca.gov/members/board.htm

1. Key Definitions

This chapter provides definitions of specific terms used throughout the publication. It also explains essential conditions for tax-exempt sales to Indians and requirements for documenting those sales. Be sure to read it before proceeding to the following chapters.

Terms used throughout the publication

Please review these terms carefully. How tax applies to different sales can depend on whether a person, organization, or location fits the specific definitions below.

Indian

For California sales and use tax purposes, an “Indian” is a person who is both of the following:

- An individual of American Indian descent, and
- Eligible to receive services as an Indian from the United States Department of the Interior.

Indian couple

A married couple or a registered domestic partnership should be treated as an Indian couple for exemption purposes when it consists of two Indians or of an Indian and a non-Indian that have entered into officially recognized family relationships under California law or tribal law. This generally includes a married couple or a domestic partnership entered into under the Domestic Partner Rights and Responsibilities Act of 2003. Tribes have the authority to establish their own laws and regulations regarding such unions. Tribal laws include not only written laws, but may also include tribal customs and practices. However, such customs and practices must be that of the tribe, not of an individual tribal member. Therefore, if either California law or tribal law recognizes the family relationship, and at least one member of the couple is an Indian, the couple qualifies as an Indian couple.

Indian organization

“Indian organization” includes Indian tribes and tribal organizations, including tribes that incorporate pursuant to section 17 of the Indian Reorganization Act of 1934 (25 U.S.C. § 477). Partnerships qualify as “Indian organizations” for California sales and use tax purposes only when all of the partners are Indians. Corporations and limited liability companies qualify as Indian organizations only if they are organized under tribal authority and wholly owned by Indians. If an organization does not meet these criteria, it does not qualify, even when owned or operated by Indians.

For California sales and use tax purposes, a sale to an Indian organization (or to an Indian couple as described above) is treated the same as a sale to an individual Indian. Please keep this in mind as you read this publication.

Indian Purchaser

Throughout this document, the proper application of sales and/or use tax to transactions involving Indians is discussed. The discussion of transactions involving a sale of tangible personal property to an Indian uses the term “Indian Purchaser.” An “Indian Purchaser” means and includes an individual Indian, an Indian couple, or an Indian organization, as those terms are discussed above.

Reservation

Sales and Use Tax Regulation 1616, subdivision (d)(2) defines “reservation” for purposes of the proper application of the Sales and Use Tax Law. Under the Sales and Use Tax Law “reservation” generally has

the same meaning “Indian country” as defined in Title 18 of the United States Code section 1151. This publication uses the term “Indian country” to refer to tribal areas that would be considered “reservations” under Regulation 1616. For example, Indian country includes any of the following:

- A reservation, including rights-of-way and easements running through a reservation;
- A rancheria; and
- Any land held by the United States in trust for any Indian tribe or Indian individual (also known as “trust land”).

Please note: Not all portions of a facility housing an Indian gaming establishment may be located in Indian country. For example, some portions of a facility containing a gaming establishment (like a parking lot) may be located on land adjacent to Indian country. Transactions occurring on land adjacent to Indian country, may not meet the exemption requirements.

Exemption Certificate

The Sales and Use Tax Law presumes that all gross receipts are subject to tax until the contrary is established. This presumption may be overcome by the seller timely obtaining an exemption certificate from the purchaser.

An exemption certificate is any written document that includes the following:

- Date;
- Signature of the purchaser, purchaser’s agent, or the purchaser’s employee;
- Name and address of the purchaser;
- Seller’s permit number, or if the purchaser is not required to hold a seller’s permit, a notation to that effect and the reason;
- Description of the property purchased under the certificate; and
- Statement of the manner in which or the purpose for which the property will be used so as to make the sales and/or use tax inapplicable to the sale.

Please see page 18 for more information regarding documenting exempt transactions. Additionally, a sample exemption certificate is contained on page 37.

Sales tax and use tax: what’s the difference?

Sales tax

California sales tax generally applies to the retail sale in California of tangible personal property (i.e., physical items) such as goods, merchandise, vehicles, vessels, aircraft, and other physical products. Sales are taxable unless they are specifically exempt or excluded by law. As noted in the “Preface,” there is no general exemption from the sales tax for sales to Indians.

If you make retail sales of tangible personal property in this state, you are required to hold a California seller’s permit. This is true even when most or all of your sales are not taxable, or qualify as exempt. (Exception: You are not required to hold a seller’s permit if all of your sales are made exclusively in interstate or foreign commerce or if you are an Indian retailer making sales only in Indian country.)

For more information, see publication 107, *Do You Need a California Seller’s Permit?*

Use tax

California use tax generally applies to the storage, use, or other consumption of tangible personal property in California. California use tax is a companion to the sales tax. Persons or businesses generally owe use tax when they use, store, give away, or consume physical products in California if they did not pay California sales tax on their purchase. Use tax generally applies to untaxed purchases made from out-of-state sellers. It may also apply to certain purchases in Indian country. The use tax rate for a California location is the same as the sales tax rate.

Retailers who are required to collect use tax, but not pay sales tax, are required to hold a Certificate of Registration—Use Tax. You may obtain a Certificate of Registration – Use Tax by completing form BOE-400-CSC.

Construction contracts - definition

Construction contractors are persons who for themselves, in conjunction with, or by or through others, agree to perform and do perform construction contracts. A construction contract means and includes a contract, whether on a lump-sum, time-and-material, cost-plus, or other basis, to:

1. Erect, construct, alter, or repair any building or other structure, project, development, or other improvement on or to real property; or
2. Erect, construct, alter, or repair any fixed works such as waterways and hydroelectric plants, steam, and atomic electric generating plants, electrical transmission and distribution lines, telephone and telegraph lines, railroads, highways, airports, sewers and sewage disposal plants and systems, waterworks and water distribution systems, gas transmission and distribution systems, pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, refineries and chemical plants; or
3. Pave surfaces separately or in connection with any of the above works or projects; or
4. Furnish and install the property becoming a part of a central heating, air-conditioning, or electrical system of a building or other structure, and furnish and install wires, ducts, pipes, vents, and other conduit imbedded in or securely affixed to the land or a structure thereon.

2. Sales to Indians: Retailers Located Outside Indian Country

This chapter describes how sales and use tax generally apply to sales to Indians when the retailer is not located in Indian country (“off-reservation” retailer). Please be sure to read chapter 1, “Key Definitions,” before you read this chapter.

Sales to Indian customers, in general

If you are a California retailer who is not located in Indian country, your sales to Indian customers are generally subject to tax, unless specific requirements for exemption are met.

This chapter discusses the general rules that apply to your sales to Indian customers. The chapter also discusses specific rules that apply to dealer sales of vehicles, vessels, and aircraft, and to leases.

Transfer of ownership in Indian country

Sales tax generally applies to sales by “off-reservation” retailers to Indian purchasers unless *all* of the following conditions are met:

- You transfer ownership of the merchandise to an Indian purchaser in Indian country.
- You deliver the merchandise in Indian country.
- The Indian purchaser lives in Indian country.

When the Indian purchaser is an Indian organization, the requirement that the Indian purchaser reside in Indian country must still be met. An Indian organization will be deemed to reside in Indian country if the Indian organization is located in Indian country or otherwise conducts the business of the Indian organization in Indian country.

Please note: The purchaser is not required to live on the same reservation where ownership transfers. In other words, a resident of Reservation A could qualify for the exemption even when taking ownership of merchandise on Reservation B.

(For a more complete definition of “Transfer of title (ownership) in Indian country,” please see page 18).

Married couples or registered domestic partners

Assuming all other requirements for exemption are met, sales of tangible personal property by an “off-reservation” retailer to an Indian couple are not subject to sales tax. An Indian couple, as defined on page 7, consists of a married couple or registered domestic partnership that consists of two Indians or of an Indian and a non-Indian that have entered into officially recognized family relationships under California law or tribal law.

Please note: An Indian couple may be liable for use tax on the purchase price of the property if the property is used outside of Indian country more than one half of the time during the first 12 months following delivery.

Dealer sales of vehicles, vessels, and aircraft

Tax generally applies to a dealer’s sales of vehicles, vessels, and aircraft in the same way it does to sales of other merchandise. However, sales tax generally does not apply to sales to Indians who live in Indian country when the vehicle, vessel, or aircraft is delivered in Indian country and ownership also transfers to

the Indian in Indian country. The sale does *not* qualify for the exemption if the Indian takes possession before delivery in Indian country. The same principles apply to sales to Indian organizations and Indian couples. (Please see page 16 for more information on exempt purchases of vehicles, vessels, and aircraft).

Permanent improvements to real property

In general, tax does not apply to your sale of an item that will be permanently attached as an improvement to real property in Indian country, provided all of the following conditions apply:

- Your customer is an Indian who resides in Indian country (see Purchasers on page 19).
- The merchandise is delivered to the Indian purchaser in Indian country.
- Ownership of the item transfers to the purchaser in Indian country (see page 18).

Improvements to real property include:

- Buildings, structures, fixtures, and fences erected on or attached to land. For purposes of this sales tax exemption, improvements include trailer coaches that are not registered with the Department of Motor Vehicles (DMV), mobilehomes, manufactured homes, and factory-built housing.
- Ornamental trees and vines. Please note that fruit and nut trees can also be improvements, but their sale may be exempt under another section of the Sales and Use Tax Law.

For information on construction contractors, please see chapter 6, on page 22.

Mobilehomes

“Mobilehomes,” sometimes referred to as modular homes or manufactured homes, are structures designed:

- To be movable in one or more sections, and
- Equipped to contain one or two dwelling units.

They can be designed for use with or without foundation systems. “Modular home” is a relatively new term and meets the definition of a mobilehome. Since the Revenue and Taxation Code uses the term “mobilehome” for all such homes, for consistency this publication does likewise.

A sale of a mobilehome to an Indian purchaser who lives in Indian country and takes ownership and delivery in Indian country will not be exempt from tax if the mobilehome is used outside of Indian country more than one-half of the time in the first 12 months after the sale.

In this case, the buyer owes the use tax and is responsible for paying it by using:

- The return included in publication 79-B, *California Use Tax*,
- California income tax return, or
- Sales and use tax return, if the purchaser has a California seller’s permit.

For more information on mobilehomes and factory-built housing, see publication 47, *Mobilehomes and Factory-Built Housing*, and publication 9, *Tax Tips for Construction and Building Contractors*.

Leases

When the lessee is an Indian residing in Indian country, neither sales nor use tax generally applies to leases of tangible personal property for any time period when the leased property is located and used in Indian country. Unless there is contrary evidence, it is assumed the use of the property by the Indian

lessee is in Indian country if the lessor delivers the property to the Indian lessee in Indian country. However, use tax applies to leased vehicles registered with the DMV to the extent that the vehicles are used outside of Indian country.

Leases of vehicles and mobile transportation equipment

If you lease vehicles or mobile transportation equipment to Indian customers, please contact our Taxpayer Information Section (see page 30) for help regarding how tax applies and what documentation you need to claim an exemption from tax for your lease.

Records

Your records must include documents to support each claimed exempt sale. For information on documenting sales to Indians who live in Indian country or Indian organizations (see page 18). Please contact our Taxpayer Information Section at 800-400-7115 for further assistance in providing the necessary documentation to establish that the sale of the vehicle, vessel, or aircraft took place in Indian country. You may also call our Consumer Use Tax Section directly at 916-445-9524.

Note: An exemption certificate that may be used to document exempt sales, BOE-146-RES, *Statement of Delivery in Indian Country*, is included on page 37 of this publication.

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3. Sales by Retailers Located in Indian Country

This chapter describes how sales and use tax generally apply to sales made by retailers located in Indian country. It addresses sales by Indian and non-Indian retailers, as well as purchases by Indians and non-Indians. Please be sure to read chapter 1, “Key Definitions” before you read this chapter.

Permit requirements

In general, you must hold a seller's permit if you make sales in California. This is true whether you are an Indian, an Indian organization, or a non-Indian.

However, as explained later in this chapter, certain sales made only in Indian country by Indian retailers, including federally licensed Indian traders, are subject to use tax but not sales tax. Indian sellers who only make sales of this type do not need a seller's permit which is used for the collection of sales tax reimbursement. Instead, they must obtain a California Certificate of Registration—Use Tax. You can obtain an application (BOE-400-CSC) from our website at www.boe.ca.gov or from our Taxpayer Information Section at 800-400-7115.

A retailer operating in Indian country may be required to obtain a tribal sales license. For more information regarding the requirement to obtain a tribal sales license and the proper application of tribal tax laws, please contact the tribal government in whose jurisdiction you are operating.

Please note: A tribal sales license is *not* a legal substitute for a California seller's permit or a certificate of registration to collect use tax.

Sales by “on-reservation” Indians: basic application of tax

If you are an Indian retailer located in Indian country, many of your sales may be exempt from California sales tax. Others may be taxable. In some cases, use tax will apply.

The discussion below explains the basic rules on how tax applies to your sales. And remember, if any of your sales are subject to sales tax, you need a California seller's permit.

Sales by “on-reservation” Indian retailers to Indians who reside in Indian country

Sales tax does not apply to sales of tangible personal property made to Indians by Indian retailers if:

- The sales are negotiated at places of business located in Indian country,
- The Indian purchaser resides in Indian country, and
- The property is delivered to the purchaser in Indian country.

In such an instance, the Indian *purchaser* may be required to pay use tax, but only if, within the first 12 months following delivery, the property is used outside Indian country more than it is used in Indian country.

Please note: The Indian purchaser is not required to live in the specific part of Indian country where ownership transfers. In other words, a resident of Reservation A could qualify for the exemption when taking ownership of merchandise on Reservation B.

Sales by “on-reservation” Indian retailers to non-Indians and Indians who do not reside in Indian country

Sales tax generally does not apply to sales of tangible personal property by Indian retailers made to non-Indians and Indians who do not reside in Indian country when:

- The sales are negotiated at places of business located in Indian country, and
- The property is delivered to the purchaser in Indian country.

Use tax generally applies to sales by “on-reservation” Indian retailers made to non-Indians and Indians who do not live in Indian country. These sales are deemed for use by the purchaser in California and Indian retailers are required to collect use tax from such purchasers and must register with the BOE for that purpose. In circumstances where you are required to collect use tax from any of your purchasers, you must hold a California Certificate of Registration—Use Tax. You may obtain a Certificate of Registration – Use Tax by completing form BOE-400-CSC, *Application for Certificate of Registration - Use Tax*. As previously explained, a sale generally takes place outside Indian country when an “on-reservation” retailer delivers the items sold to the purchaser outside Indian country.

Sales by Indian retailers of meals, food or beverages at eating and drinking establishments

Indian retailers selling meals, food or beverages, including alcoholic beverages, at “on-reservation” eating and drinking establishments are *not* required to collect sales tax or use tax on the sale of meals, food or beverages that are sold for consumption in Indian country, whether they are sold to Indians who reside in Indian country, or to non-Indians, or Indians who do not reside in Indian country.

Sales by “on-reservation”, non-Indian retailers: basic application of tax

If you are a non-Indian retailer located in Indian country, some of your sales may be exempt from California sales tax, but others may be taxable. In some cases, use tax will apply (see use tax description on page 9).

Sales by “on-reservation”, non-Indian retailers to Indians who reside in Indian country

Sales tax does not apply to sales of tangible personal property made to Indians by non-Indian retailers when:

- The sales are negotiated at places of business located in Indian country,
- The Indian purchaser resides in Indian country, and
- The property is delivered to the Indian purchaser in Indian country.

In such an instance, the Indian *purchaser* may be required to pay use tax but only if, within the first 12 months following delivery, the property is used outside Indian country more than it is used in Indian country.

Please note: The Indian purchaser is not required to live in the specific part of Indian country where ownership transfers. In other words, a resident of Reservation A could qualify for the exemption when taking ownership of merchandise on Reservation B.

Please also note: The sale is exempt from sales tax whether the retailer is a federally licensed Indian trader or is not so licensed.

Sales by “on-reservation”, non-Indian retailers to non-Indians and Indians who do not reside in Indian country

Either sales tax or use tax applies to sales of merchandise by “on-reservation”, non-Indian retailers to non-Indians and Indians who do not reside in Indian country, or if you make any “off-reservation” sales. You may obtain a seller’s permit by completing form BOE-400-SPA, *California Seller’s Permit Application for Individuals/Partnerships/Corporations/Organizations (Regular or Temporary)*. A tribal sales license is not a substitute for a California seller’s permit or a certificate of registration to collect use tax.

Documenting claimed exempt sales

Be sure your records include documents to show the basis for your claim that a particular sale was exempt from tax. For information on documenting sales to Indians who live in Indian country or Indian organizations, please see chapter 5, page 18.

Tribal taxes

Some tribes require “on-reservation” retailers to collect and pay a tribal tax on their sales. The amount of tribal tax you charge your customers for sales you make in Indian country is not subject to California sales or use tax when the following apply:

- The tax is based on a percentage of the selling price of the merchandise.
- You are substantially complying with the requirements of the California Sales and Use Tax Law. In other words, you have a seller’s permit or a certificate of registration to collect use tax and you are filing your sales and use tax returns on time, reporting all taxable and nontaxable sales, and paying all California taxes due.

The imposition of a tribal tax does not affect the liability for California sales or use taxes.

Sales for resale

As a registered seller, you may make nontaxable sales for resale to businesses who will sell the merchandise they buy from you or physically include that merchandise in items they make and sell. If you accept a timely, fully-completed resale certificate from your customer in good faith, you generally do not owe tax on your sale.

A certificate will be considered timely if you accept it any time before you bill the purchaser for the property, or any time within your normal billing and payment cycle, or any time at or prior to delivery of the property to the purchaser. A resale certificate remains valid until it is revoked in writing.

Indian retailers may purchase items for resale regardless of whether they are required to hold a seller’s permit. Indian buyers who are not required to hold a seller’s permit should make note of that fact on their resale certificates. For example, the buyer might state, “I do not hold a California seller’s permit because all of my sales are made in Indian country. None of my sales are subject to California sales or use tax.”

The seller may accept this certificate as a valid resale certificate if it is timely taken and is in the proper form as provided in Regulation 1668, *Sales for Resale*, and taken in good faith from a person who is engaged in the business of selling the kind of merchandise being purchased. Other evidence to show the purchaser is engaged in the business of selling the kind of merchandise being purchased may include documents such as a business license, business card, or a copy of an advertisement from a newspaper or telephone book.

For more information, see Regulation 1668, *Sales for Resale*, and our publication 103, *Sales for Resale*.

4. Purchases by Indians

This chapter provides information for Indian purchasers regarding the proper application of use tax on purchases of tangible personal property and also the type of documentation the purchaser must retain to support an exemption from use tax.

Reporting and paying use tax

An Indian purchaser may owe use tax when the transaction is exempt from sales tax (see use tax description on page 9). Use tax is due when the Indian buyer who lives in Indian country does both of the following:

- Takes ownership and delivery of an item in Indian country, and
- Uses the item outside Indian country more than one-half of the time in the first 12 months after the sale. (An item is used outside Indian country when the item is stored or used outside Indian country.)

Example: An Indian purchaser who resides in Indian country operates an event business, and negotiates the purchase of a sound system for \$3,500 from a dealer in Los Angeles. The dealer, using its own trucks, delivers the system in Indian country and ownership transfers to the purchaser there. The sale is exempt from sales tax. The purchaser will use the sound system at concerts and events all over California. Some of the events are in Indian country while others are not. The purchaser owes use tax based on the system's \$3,500 purchase price if in the first 12 months after purchase, the purchaser uses or stores the sound system outside Indian country more than half the time.

Paying use tax

Individuals who owe use tax can pay it when filing their California income tax return or by using the simple form found in our publication 79-B, *California Use Tax*. If the tax liability involves an aircraft, publication 79-A, *Aircraft and California Tax*, should be used to report the applicable use tax.

Businesses that hold seller's permits should pay any use tax they owe when filing their sales and use tax return. Other businesses that are required to collect use tax from customers and pay it to the BOE must obtain a Certificate of Registration—Use Tax.

For information on how to apply district use tax to this and other specific situations, please refer to publication 44, *Tax Tips for District Taxes*.

Documenting exempt purchases of vehicles, vessels, and aircraft

When a dealer's sale of a vehicle is exempt from the sales tax due to delivery to an Indian in Indian country, and the registration address for DMV purposes is also in Indian country, it is rebuttably presumed the vehicle is purchased for use in Indian country and is not subject to the use tax. Maintaining a log of miles driven within and outside Indian country is not required since it is rebuttably presumed the vehicle is stored at the registration address when not being operated. Since storage qualifies as use, the time stored in Indian country will generally exceed the time of use outside Indian country.

The registration address is typically a mailing address. If the physical storage address of the vehicle is a different location than the mailing address, the physical storage address of the vehicle determines whether the purchaser must document the use within and outside Indian country. For example, if the purchaser has a Post Office Box for receiving mail that is not located in Indian country, but the vehicle is actually garaged

at the purchaser's residence in Indian country, the purchaser is not required to document use of the vehicle within and outside Indian country. The purchaser, however, must be able to document that the vehicle is stored in Indian country.

Mobilehomes

Generally, the purchase of a mobilehome by an Indian purchaser who lives in Indian country and takes ownership and delivery in Indian country will be rebuttably presumed for use in Indian country. However, if the mobilehome is used outside Indian country more than one-half of the time in the first 12 months after the sale, the use tax exemption does not apply.

In this case, the buyer owes the use tax and is responsible for paying it by using:

- The return included in publication 79-B, *California Use Tax*,
- California income tax return, or
- Sales and use tax return, if the purchaser has a California seller's permit.

For more information on mobilehomes and factory-built housing, see publication 47, *Mobilehomes and Factory-Built Housing*, and publication 9, *Tax Tips for Construction and Building Contractors*.

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5. Documenting Exempt Transactions

This chapter provides information to sellers and purchasers regarding the correct type of documentation to support claimed exempt sales. This documentation should be provided by the purchaser and maintained in the seller's records as proof of the exempt sale. For more information on records that are suitable for sales and use tax purposes, please see Regulation 1628, Transportation Charges, Regulation 1667, Exemption Certificates, and Regulation 1698, Records.

Transfer of title (ownership) in Indian country

How tax applies to a particular sale or purchase by an Indian depends on whether ownership of the item being sold or purchased transfers to the Indian purchaser in Indian country.

Sale by retailer located in Indian country

Ownership of an item being sold transfers in Indian country when an “on-reservation” retailer does both of the following:

- Negotiates the sale in Indian country, and
- Hands over or delivers the item in Indian country to an Indian or to an agent of the Indian.

Sale by retailer not located in Indian country

Retailers located outside Indian country may sell to Indian buyers who request delivery in Indian country. For a sale to qualify as a transfer of title (ownership) in Indian country, the following conditions must apply:

- The contract of sale or other sales agreement cannot transfer ownership of the item to the buyer before the item is delivered in Indian country, and
- The buyer or the buyer's representative cannot take possession of the item before delivery in Indian country.

In addition, the retailer generally must deliver the product:

1. Using the retailer's vehicle, or
2. By mail, common carrier (UPS, FedEx, etc.), or contract carrier (a shipping, trucking, or transport company), when both of the following requirements are met:
 - The contract of sale or sales invoice includes a statement specifically requiring delivery in Indian country (for example, F.O.B. name of Indian reservation) and providing that title passes upon delivery in Indian country, and
 - The goods are in fact delivered in Indian country.

When delivery does not take place as described here, ownership of the item being sold or purchased generally transfers to the buyer outside Indian country.

Generally, when property is delivered by common or contract carrier, the transfer of title and the shift of risk of loss may occur at different locations. However, it is important to note that for the sale of property to an Indian residing in Indian country with delivery by common carrier or contract carrier to qualify as exempt from tax, the contract of sale must contain a title clause indicating title transfers to the Indian purchaser in Indian country and the contract of sale must also require delivery in Indian country (F.O.B. destination). Inclusion of the F.O.B. destination statement will dictate that the risk of loss shifts at the destination.

Therefore, risk of loss and transfer of title will both occur in Indian country. However, where the sale occurs depends solely on where title passes.

Please note: This is a general description of transfer of ownership in Indian country. Other sections of this publication describe the specific rules that apply to certain types of sales and leases.

Claimed exempt sales to Indians require documentation

Retailers

When you make an exempt sale to an Indian purchaser as explained previously in this publication, you should keep copies of documents that BOE auditors can use to verify your sale is exempt. This generally requires documentation that you transferred title to the property in Indian country and that the sale of the property was to an Indian purchaser. For example, you may obtain documentation such as the following:

- One or more documents that show the purchaser is an Indian, such as a copy of the purchaser's tribal ID card, a letter from a tribal council, or a letter from the U.S. Department of the Interior.
- Documents to show that ownership of the merchandise transferred to the buyer in Indian country and delivery occurred there, such as contracts of sale, invoices, bills of lading, delivery receipts, and freight invoices.

To help you document exempt sales you may obtain an exemption certificate from the Indian purchaser. As discussed in more detail below, the exemption certificate should state that the Indian purchaser lives in Indian country. The exemption certificate will serve as support that the property was sold to an Indian. Therefore, if you obtain an exemption certificate, you will not need to obtain any additional documentation showing the purchaser is an Indian such as a tribal ID card. You will still need to retain documentation showing transfer of title and delivery of the property to the Indian in Indian country.

The BOE-146-RES, *Statement of Delivery in Indian Country*, is available on page 37. The BOE-146-RES contains all of the required elements of an exemption certificate. Additionally, it contains a section that may be completed by a notary public to document delivery of the property in Indian country. Generally, a notarized BOE-146-RES is used to document delivery of the property when delivery is made by facilities of the retailer. The retailer is not required to obtain a notarized statement of delivery, but the retailer is required to obtain documentation demonstrating the property was delivered to the Indian purchaser in Indian country. If you obtain a properly completed and notarized BOE-146-RES, you do not need to obtain any additional documentation showing the property was delivered directly to the purchaser in Indian country. If the property is delivered by a common carrier or contract carrier, freight invoices or bills of lading will generally qualify as sufficient documentation of delivery to the Indian purchaser in Indian country.

If a state-licensed notary public is not readily available to document delivery of the property by facilities of the retailer in Indian country, please note that many tribes have tribal council officers who may act in the capacity of notary public for the purpose of documenting delivery in Indian country. Certification of delivery in Indian country by tribal council officers or their designees is acceptable.

Purchasers

If you are an Indian who lives in Indian country, you will need to provide documentation to the retailer that you qualify for the tax exemptions explained in this publication. Generally, you will need to provide the retailer with a signed exemption certificate stating that you live in Indian country. In lieu of providing the retailer with an exemption certificate, you may provide the retailer with documentation showing you are an

Indian, such as a tribal ID card, a letter from your tribal council, or a letter from the U.S. Department of the Interior, and documentation that you reside in Indian country.

If you are an Indian organization, you must also provide documents to prove that you qualify for the tax exemptions explained in this publication. For example:

- If your organization is a partnership, you should provide the retailer with documents that show all of your partners are Indians, such as partnership agreements.
- Documents showing that your organization is an Indian tribe or tribal organization.
- If your organization is a corporation, you should provide the retailer with documents that show it is organized under tribal authority and wholly owned by Indians, such as the organization's articles of incorporation.
- An "exemption certificate" containing certain other required content (see next section).

Exemption certificates

A seller is relieved of the liability for sales tax if the purchaser certifies in writing to the seller that the property is subject to an exemption. An exemption certificate must be in writing, issued timely, and accepted by the seller in good faith. It can be a simple document in the form of a letter. The certificate or letter must include all of the following essential elements:

For individuals and Indian couples:

- The date,
- The purchaser's name,
- Home address,
- Signature,
- A description of the products or merchandise purchased under the certificate, and
- A statement that the property is being purchased for use in Indian country by an Indian who lives in Indian country.

For Indian organizations:

- The date,
- The organization's name,
- The organization's address,
- The title and signature of the person completing the certificate,
- A description of the products or merchandise purchased under the certificate, and
- A statement that the property is being purchased for use in Indian country by the Indian organization.

A document containing the essential elements described above is considered the minimum amount of information to help support claimed exempt sales.

A sample exemption certificate BOE-146-RES, *Statement of Delivery in Indian Country*, is provided on page 37 of this publication. This certificate can be used to document exempt sales of general merchandise, vehicles, vessels, and aircraft. A sample exemption certificate BOE-146-CC, *Construction Contract in Indian Country Exemption Certificate*, is provided on page 39 of this publication. The BOE-146-

CC may be used for the purposes of documenting exempt retail sales of materials and fixtures by a construction contractor to an Indian purchaser in Indian country. With either exemption certificate, a specific exemption certificate for a single transaction may be issued, or a blanket exemption certificate covering numerous transactions may be issued. However, for each transaction in which a statement of delivery is required, a separate statement of delivery must be completed.

More information on exemption certificates may be found in Regulation 1667, *Exemption Certificates*.

Good Faith

If you accept a completed exemption certificate from an Indian purchaser in good faith, our audit staff should not question your acceptance of the certificate. However, if you have evidence or knowledge that the Indian may not live in Indian country, you should not accept an exemption certificate unless the Indian purchaser provides you with other reliable documentation to verify residency in Indian country.

A mailing address outside Indian country or the same address used by numerous Indians may cause you to question the validity of an exemption certificate. Many Indians residing in Indian country maintain post office boxes at locations outside Indian country. Other reservations may only have a single mailing address on the reservation that is shared by Indians on the reservation. Provided the property is in fact delivered to an Indian in Indian country that resides in Indian country, the exemption still applies. However, if delivery of the property is made to the “off-reservation” post office box, the exemption does not apply. If you have reason to question the validity of an exemption certificate, you should obtain additional documentation to support the exempt sale.

Records

A retailer's records should include documents to support the basis for a claim that a particular sale was exempt from tax. You should retain exemption certificates and any other supporting documentation you obtain to support claimed exempt sales for at least four years.

6. Sales Related to Construction Contracts

This chapter describes how tax applies to sales to and by construction contractors, in situations involving Indian customers and construction contracts for work in Indian country. For detailed information on applying tax to sales of construction materials, fixtures and supplies, please see publication 9, Tax Tips for Construction and Building Contractors. You may also want to refer to Regulation 1616, Federal Areas, and Regulation 1521, Construction Contractors. You may obtain copies from our website at www.boe.ca.gov or Taxpayer Information Section at 800-400-7115.

Construction activity outside Indian country

There are no special sales or use tax exemptions for construction work done for an Indian customer outside Indian country. Tax applies to your sales in the same manner as other construction contracts.

Materials vs. fixtures

Generally, a construction contractor is a *consumer* of materials and a *retailer* of fixtures that are furnished and installed in the performance of a construction contract. Due to the different application of tax when a contractor is a consumer rather than a retailer, it is very important to ascertain whether items that are being furnished and installed in the performance of a construction contract are materials or fixtures.

Materials are construction materials, components, and other tangible personal property incorporated into, attached to, or affixed to real property by contractors in the performance of a construction contract, and which, when combined with other tangible personal property, lose their identity to become an integral and inseparable part of the real property. Examples of items typically regarded as materials include concrete, doors, electric wiring, lumber, flooring, roofing, windows, and paint.

Fixtures are items that are accessory to a building or other structure. Fixtures do not lose their separate identity as accessories when installed. Examples of fixtures include signs, heating and air conditioning units, furnaces, plumbing fixtures, lighting fixtures, shutters, and blinds.

For more information on typical items regarded as materials or fixtures, see Appendix A and Appendix B of Regulation 1521, *Construction Contractors*.

Sales to construction contractors (by “off-reservation” retailers)

Sales to Indian contractors

Materials

Sales tax does not apply to your sales of materials to Indian construction contractors (construction contractors that are Indians) when you deliver the materials in Indian country, and ownership transfers to the Indian contractor in Indian country. Tax does apply if materials are delivered to Indian construction contractors at any point outside Indian country. Be sure to read the information on documentation and transfer of ownership in Chapter 5 on page 18.

Fixtures

Sales tax does not apply to sales of fixtures furnished and installed by Indian construction contractors in Indian country. Therefore, when you sell fixtures to an Indian contractor, you should obtain a completed and timely California resale certificate from the Indian contractor. In the event the purchasing Indian contractor does not have a California seller's permit, the resale certificate must include sufficient information as to why the Indian contractor is not required to hold a California seller's permit, in lieu of a seller's permit number. Please refer to publication 103, *Sales for Resale*, for additional information.

Sales to non-Indian contractors

Materials

Generally, construction contractors are consumers of materials that are furnished and installed in the performance of a construction contract. As a consumer, tax generally applies to sales of materials to contractors who are not Indians. This is true even when the materials are delivered in Indian country and permanently attached to real estate in Indian country.

Construction contractor as retailer of materials

Under certain specific circumstances, a construction contractor performing a construction contract may qualify as a retailer of materials by meeting each of the following requirements (please note that these requirements are distinct from the requirements for exemption discussed below):

- The contractor must be in the business of selling materials or other tangible personal property.
- The contractor must possess a valid seller's permit.
- The construction contract must *explicitly* provide for the transfer of title to the materials prior to the time the materials are installed, and must separately state the sales price of materials, exclusive of the charges for installation (for example, a time-and-materials contract).
- The construction contractor must provide a valid and timely resale certificate to its vendor.

A construction contractor that only furnishes and installs materials may not have a seller's permit. For example, a construction contractor that furnishes and installs carpet and tile and makes no over-the-counter sales of materials is generally not required to hold a seller's permit. If such a construction contractor wishes to enter into a construction contract with an Indian purchaser in Indian country to furnish and install materials and qualify as a retailer of the materials, the construction contractor must obtain a seller's permit. Any contractor that obtains a seller's permit is deemed to be in the business of selling materials. If the construction contractor does not obtain a seller's permit, the contractor may not act as a retailer of the materials.

Fixtures

Sales tax generally does not apply to the sale of fixtures to non-Indian contractors when the contractors furnish and install the fixtures in Indian country. You should obtain a completed and timely California resale certificate from the contractor. Please refer to publication 103, *Sales for Resale*, for additional information.

Sales by construction contractors

Sales to Indians—Contracts for work in Indian country

As a construction contractor, when your customer is an Indian, tax generally does not apply to your sales of *fixtures* furnished and installed as part of a construction contract for work in Indian country. This is because a contractor is a retailer of fixtures that are furnished and installed in the performance of a construction contract and the retail sale takes place in Indian country.

However, the same provisions do not necessarily apply to materials since a contractor is generally a consumer of materials that are furnished and installed in the performance of a construction contract. Unless you qualify as a retailer of materials, as provided above, you are the consumer of materials and tax is generally due on your purchase of those materials.

Tax-exempt sales of materials under a construction contract

When the construction contractor qualifies as a retailer of materials, as described above, the contractor may purchase materials from its vendor for resale. In order to resell the materials in a tax-exempt transaction to the Indian customer in performance of a construction contract in Indian country, the following requirements must also be met:

1. The construction contract must separately state the price of materials, exclusive of the charge for installation (for example, a time-and-materials contract).
2. The contract must specifically provide that ownership of the materials (title) will transfer to the Indian customer in Indian country *prior to use or installation of the materials*.
3. The materials must in fact be delivered to the Indian customer in Indian country.
4. The construction contractor must obtain an exemption certificate from its Indian customer.

Be sure to document the circumstances of any sale you claim as exempt (see documentation information on page 18).

It is important to note that in a situation where a subcontractor is acting as a retailer of materials that are furnished and installed, or in situation where a subcontractor is furnishing and installing fixtures, the subcontractor may not accept a resale certificate from a prime contractor. If the subcontractor is making a retail sale of materials or fixtures to a prime contractor, tax applies to the retail sale. The subcontractor must sell the materials or fixtures at retail directly to the Indian purchaser in Indian country for the transaction to qualify as exempt from tax.

For a contractor to be a retailer of materials, the contractor must separately state the selling price of the materials and the contract must pass title of the materials to the Indian customer prior to installation. A time-and-material contract is one type of contract that provides for a separate statement of the selling price of materials. However, a time-and-material contract is not required. Any other type of contract may be used provided the contract contains a separately stated selling price of the materials. For example, a guaranteed maximum price contract may qualify provided the selling price of the materials are separately stated. In addition to the separately stated selling price of the materials, the contract must contain sufficient language transferring title of the materials to the Indian purchaser in Indian country prior to installation by the selling contractor.

Following are two non-exhaustive examples of language that may be included in a guaranteed maximum price construction contract for the purpose of providing a separately stated selling price of materials. In addition to either of the following examples, the contract must contain a title clause providing for the transfer of title to the materials from the contractor to the Indian purchaser prior to installation.

Example 1.

Section x. Contract Price. Subject to the terms and conditions hereof, as payment for Contractor's performance of the Services under this Agreement, Tribe shall pay a guaranteed maximum cost of \$_____ ("Contract Price"). The portion of the Contract Price which is the guaranteed maximum cost of materials only is \$_____, which amount is exclusive of any charge for installation and performance of labor Services.

Example 2.

Contract Sum

The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed an aggregate amount, hereinafter the "Guaranteed Maximum Price," equal to \$_____.

The Cost of the Work shall include materials that are exempt from tax under 18 CCR 1616(d)(4)(C), which materials Contactor shall, pursuant to this Agreement, sell or cause to be sold to Owner. The final cost of such materials is estimated to be \$_____. Changes to the cost of materials exempt from sales tax under 18 CCR 1616(4)(4)(C), stated above, shall be effected through change orders, which shall in all cases separately state the cost of such materials.

Two Agreements

Notwithstanding anything to the contrary contained herein, this Agreement is intended to constitute, and shall be construed and interpreted as if it constitutes, two (2) separate agreements with regard to materials exempt from sales tax under 18 CCR 1616(d)(4)(C), as follows:

- a) one for the retail sale of such materials from the Contractor to the Tribe, with delivery to the Tribe and transfer of title to the Tribe occurring in Indian country prior to installation; and
- b) one for the later installation (and labor associated therewith) of the Tribe's materials into the Project.

Contractor as Seller

It is the intent of the parties that Contractor, Subcontractors and Sub-subcontractors be "sellers" of materials as provided in 18 CCR 1521(b)(2)(A)2.

The above examples are meant to illustrate the nature of contract language that will allow a contractor to be a retailer of materials. It is important to note that use of the above language in a contract does not automatically result in the contractor being a retailer of materials as the contract in its entirety must be examined. As these types of transactions may be complicated, if you are unsure that your contract to furnish and install materials qualifies you as a retailer rather than a consumer, please contact the BOE for assistance.

7. Special Taxes and Fees

In addition to sales and use tax, special taxes and fees may be applicable to sales to Indians and sales in Indian country. Following is information pertaining to some of the more common special taxes and fees that may apply to transactions or activities involving Indians or conducted in Indian country.

Fuel taxes

The following tax and fee programs are administered by the Fuel Taxes Division:

- Motor Vehicle Fuel Tax
- Diesel Fuel Tax
- Aircraft Jet Fuel Tax
- Underground Storage Tank Maintenance Fee
- Oil Spill Response Prevention and Administration Fees
- Use Fuel Tax
- International Fuel Tax Agreement (IFTA)
- California/Mexico Interstate User Diesel Fuel Tax and NAFTA
- Childhood Lead Poisoning Prevention Fee

There are no special exemptions from the state's motor vehicle or diesel fuel taxes related to fuel sales in Indian country. California's excise tax on motor vehicle fuel and diesel fuel applies when the fuel is removed from an in-state fuel terminal rack or imported into the state. As a result, fuel delivered to Indian country will generally include California excise tax in its cost. Fuel retailers usually pass the tax on to their customers.

Any person who uses fuel on Indian country land that is not part of a state or local road system may claim a refund for taxes paid on fuel consumed off-highway in Indian country. Generally, Bureau of Indian Affairs roads are located within Indian country and are not considered part of a state or local road system.

If you have used gasoline in Indian country, you may file a claim for refund with the State Controller's Office. To download a claim form (SCGR-1) and schedules, go to the State Controller's website at www.sco.ca.gov. Follow the directions to file your claim for refund. If you need help or have any questions, see the contact information on the State Controller's website at www.sco.ca.gov or call staff in the Gas Tax Refund Section of the State Controller's Office at 916-445-4868. You can fax the State Controller's Office at 916-327-7116.

If you have used tax-paid clear diesel fuel off-highway on Indian country land, you may file a claim for refund by completing form BOE-770-DU, *Diesel Fuel Claim for Refund on Nontaxable Uses*. The claim for refund should be submitted to the Fuel Taxes Division at the address shown on the form.

Your claim for refund may be filed annually or quarterly (if each quarterly claim is for \$750 or greater) and must be filed within 3 years from the date the fuel was purchased.

For additional information on filing a diesel fuel tax claim for refund or other information regarding any of the Fuel Taxes programs listed above, please visit our website at www.boe.ca.gov or contact our Fuel Taxes Division as indicated below.

For IFTA or Interstate User Diesel Fuel Tax**By Phone**

800-400-7115 toll-free

916-322-9669

By Fax

916-323-4404

By Mail

Motor Carrier Section

Fuel Taxes Division, MIC: 65

State Board of Equalization

P.O. Box 942879

Sacramento, CA 94279-0065

Online

www.boe.ca.gov

All Other Fuel Tax Programs**By Phone**

800-400-7115 toll-free

916-322-9669

By Fax

916-323-9352

By Mail

Fuel Industry Section

Fuel Taxes Division, MIC: 30

State Board of Equalization

P.O. Box 942879

Sacramento, CA 94279-0030

Online

www.boe.ca.gov

Environmental fees

The Environmental Fees Division oversees the following tax and fee programs:

- Electronic Waste Recycling Fee
- Hazardous Substances Tax Law
- Marine Invasive Species (Ballast Water Management) Fee
- Occupational Lead Poisoning Prevention Fee
- Integrated Waste Management Fee
- Water Rights Fee
- California Tire Fee

Electronic Waste Recycling Fee

California's Electronic Waste Recycling Fee generally applies when a consumer purchases or leases a new or refurbished video display device that has a screen size of more than 4 inches measured diagonally. The following items are covered by this fee:

- Televisions containing cathode ray tubes (CRTs)
- Televisions containing liquid crystal displays (LCDs)
- Computer monitors containing CRTs or LCDs
- Plasma televisions
- Laptop computers
- "Bare" CRTs or any other product containing a CRT
- Portable DVD players containing LCDs

Since this fee is imposed on the consumer of these items, the fee is not owed by an Indian who resides in Indian country if the item is purchased in Indian country. However, the Indian retailer of such items must register with the BOE if the Indian retailer makes retail sales of these items to non-Indians and Indians who

do not reside in Indian country, so that the fee may be collected from those consumers and remitted to the BOE.

California Tire Fee

The California Tire Fee generally applies to consumer purchases of tires. Since the fee is imposed on the consumer of the tires, the fee is not owed by an Indian who resides in Indian country if the tire or tires are purchased in Indian country. However, the Indian retailer of such items must register with the BOE if the Indian retailer makes retail sales of these items to non-Indians and Indians who do not reside in Indian country, so that the fee may be collected from those consumers and remitted to the BOE.

Hazardous Substance Tax Law

The BOE administers hazardous waste fee programs in cooperation with the Department of Toxic Substances Control, pursuant to the requirements of the California Hazardous Substances Tax Law. Three of the fee programs worthy of special note are explained below. Each of these programs applies to Indian businesses outside Indian country and to non-Indian businesses located in Indian country. However, these programs may or may not apply to Indian businesses in Indian country, depending upon the tribes' state legal environmental responsibilities such as any that may be called for under their compacts with the state.

1. Environmental Fee

The Environmental Fee is a fee on businesses in industry groups that use, generate, or store hazardous materials or that conduct activities related to those materials. Prior to January 1, 2007, the annual fee only applied to certain corporations. Beginning January 1, 2007, Assembly Bill 1803 (Stats. 2006, ch. 77) expanded the fee to include: general partnerships, limited partnerships, limited liability partnerships, limited liability companies and sole proprietorships, in addition to corporations (which include nonprofit corporations, "S" corporations and out-of-state corporations) operating in California. In general, the fee applies to business and other organizations that have 50 or more employees who are each employed more than 500 hours in California during a calendar year. The fee is based upon the total number of employees. Please see publication 90, *Environmental Fee*, for additional information.

2. Disposal Fee

The Disposal Fee generally applies to every person who disposes of hazardous waste in this state based on the type of waste placed in a disposal site.

3. Generator Fee

In addition to the Disposal Fee, the Generator Fee applies to every person who generates five or more tons of hazardous waste per site in California within a calendar year for a specific site. This includes recycled waste and waste sent outside California for disposal. The fee is determined by the total tonnage of waste generated. If the Facility Fee has been paid for a site, the Generator Fee does not apply.

For more information regarding any of the Environmental Fee programs listed above, please visit our website at www.boe.ca.gov or contact:

By Phone, Fax, or website

800-400-7115 toll-free

916-323-9555 phone

916-327-0859 fax

www.boe.ca.gov

By Mail

Environmental Fees Division, MIC:57

State Board of Equalization

P.O. Box 942879

Sacramento, CA 95834-2879

Excise taxes

The Excises Taxes Division oversees the following tax and fee programs:

- Alcoholic Beverage Tax
- Cigarette and Tobacco Products Tax
- Cigarette and Tobacco Products Licensing
- Insurance Tax
- Emergency Telephone Users Surcharge
- Natural Gas Surcharge
- Energy Resources Surcharge

Cigarette and tobacco products taxes

Distributors

There are no special exemptions from the state's cigarette and tobacco products taxes for sales of cigarettes and tobacco products to Indians. A non-Indian cigarette distributor who sells cigarettes to an Indian must pay cigarette and tobacco products taxes and apply California cigarette tax stamps to the cigarette packages.

Indian retailers

An Indian retailer in California who buys untaxed cigarettes without a California tax stamp, or buys untaxed tobacco products, and sells them to non-Indians in Indian country is required to collect the cigarette and tobacco products tax from those purchasers and pay the tax to the BOE. If the Indian retailer does not collect and pay the tax due, the non-Indian purchaser is ultimately liable for the tax. Non-Indians who purchase cigarettes without California tax stamps, or purchase untaxed tobacco products, owe the cigarette and tobacco products tax. The non-Indian must register with the BOE and pay applicable California excise tax.

For more information regarding any of the Excise Taxes programs listed above, please visit our website at www.boe.ca.gov or contact:

By Phone, Fax, or website

800-400-7115 toll-free

916-323-9297 fax

Online

www.boe.ca.gov

By Mail

Excise Taxes Division, MIC:56

State Board of Equalization

P.O. Box 942879

Sacramento, CA 94279-0056

8. For More Information

Website

For publications, forms, regulations, and more: www.boe.ca.gov.

Taxpayer Information Section

If you have a general tax question, please call our toll-free number and speak with a Customer Service Representative. Representatives are available weekdays from 8:00 a.m. to 5:00 p.m. (Pacific time), except state holidays. Please call:

800-400-7115 TDD/TTY: 800-735-2929

In addition to English, assistance is available in other languages.

Questions regarding your account

Please call the office that maintains your records. The name and telephone number of the appropriate field office is printed on your tax return. Field office telephone numbers are provided on page 34 and are also available on our website. We can help you faster if you have your account number on hand.

Verifying a permit/license

If a customer gives you a resale certificate for a purchase, you may contact us to verify the customer's seller's permit number.

You can also verify a cigarette/tobacco license and an E-Waste Recycling Fee account.

Use the Internet: www.boe.ca.gov and look for "Verify a Permit/License."

Call our toll-free automated verification service: 888-225-5263. You will need to provide the seller's permit number you want to verify.

Faxback Service

Our faxback service, which allows you to order selected publications, forms, and regulations, is available 24 hours a day. Call 800-400-7115 and choose the fax option. We'll fax your selection to you within 24 hours.

Publications, forms, and regulations

To obtain copies of publications, forms, and regulations:

Use the Internet. Most publications, forms, and regulations are available on our website: www.boe.ca.gov.

Call our Taxpayer Information Section. A Customer Service Representative will help you during working hours. If you know the name or number of the document you need, you may call outside working hours and leave a recorded message. Certain documents are also available on our faxback service, described above.

Selected regulations and publications that may interest you are listed below. A complete listing of sales and use tax regulations and publications appears in publication 73, *Your California Seller's Permit*.

Regulations *(list varies by publication)*

- 1521 Construction Contractors
- 1521.4 Factory-Built Housing
- 1593 Aircraft and Aircraft Parts
- 1610 Vehicles, Vessels, and Aircraft
- 1610.2 Mobilehomes and Commercial Coaches
- 1616 Federal Areas
- 1628 Transportation Charges
- 1660 Leases of Tangible Personal Property - In General
- 1661 Leases of Mobile Transportation Equipment
- 1667 Exemption Certificates
- 1668 Sales for Resale
- 1698 Records

Draft

Publications *(list varies by publication)*

You may find these publications helpful. The letter C,F,K,S, or V next to a publication means it is available in Chinese (C), Farsi (F), Korean (K), Spanish (S), or Vietnamese (V).

- 9 Tax Tips for Construction and Building Contractors
- 15 California Cigarette and Tobacco Products Tax
- 17 Appeals Procedures: Sales and Use Taxes and Special Taxes (S)
- 34 Tax Tips for Motor Vehicle Dealers
- 44 Tax Tips for District Taxes (S)
- 46 Tax Tips for Leasing of Tangible Personal Property in California
- 47 Mobilehomes and Factory-Built Housing
- 51 Guide to Board of Equalization Services (C,K,S,V)
- 52 Vehicles and Vessels: How to Request a Use Tax Clearance for DMV Registration (S)
- 61 Sales and Use Taxes: Exemptions and Exclusions
- 70 Understanding Your Rights as a California Taxpayer (C,K,S,V)
- 73 Your California Seller's Permit (C,F,K,S,V)
- 75 Interest and Penalties
- 76 Audits (F,K,S)
- 79-A Aircraft and California Tax (S)
- 79-B California Use Tax (S)
- 90 Environmental Fee
- 91 California Tire Fee (S)
- 95 Electronic Waste Recycling Fee
- 103 Sales for Resale (S)
- 107 Do You Need a California Seller's Permit? (C,K,S)
- 109 Are Your Internet Sales Taxable? (S)
- 110 California Use Tax Basics (S)
- 144 Introduction to E-Filing

Tax Information Bulletin

As a registered seller, you will receive the quarterly *Tax Information Bulletin*, (TIB) which includes articles on the application of law to specific types of transactions, announcements about new and revised publications, and other articles of interest to you. If you electronically file (e-file) your sales and use tax return and are registered as an E-Client, your e-mail reminder to file will contain a link to the quarterly TIB. Otherwise, you will be mailed a copy with your paper returns. You can also find current and archived TIBs on our website at www.boe.ca.gov/news/tibcont.htm. If you file returns on a yearly basis and would like to receive all four bulletins, please call our Taxpayer Information Section at 800-400-7115 to be placed on our mailing list, or write to:

Mail Services Unit, MIC:12
Attn: Addressing Systems
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0012

Ask to be added to Mailing List #15.

Written tax advice

For your protection, it is best to get tax advice in writing. You may be relieved of tax, penalty, or interest charges that are due on a transaction if we determine that we gave you incorrect written advice regarding the transaction and that you reasonably relied on that advice in failing to pay the proper amount of tax. For this relief to apply, a request for advice must be in writing, identify the taxpayer to whom the advice applies, and fully describe the facts and circumstances of the transaction.

Please send your request to:

Audit and Information Section, MIC:44
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0044

Written tax advice is specific to individual taxpayers. You cannot obtain tax relief by relying on a written opinion given to another business, even if your transactions are similar. In addition, tax relief is not available if you incorrectly apply tax based on advice we give you in person or over the telephone.

Classes

Some of our statewide field offices offer free basic sales and use tax classes. Check the Sales and Use Tax Section on our website at www.boe.ca.gov for a listing of classes and locations. You can also call your local field office for class information.

We also offer an online Basic Sales and Use Tax tutorial that you can access on our website at any time.

Taxpayers' Rights Advocate

If you have been unable to resolve a problem through normal channels, we encourage you to contact the Taxpayers' Rights Advocate Office for help:

Taxpayers' Rights Advocate Office, MIC:70	Phone: 916-324-2798
State Board of Equalization	888-324-2798 toll-free
P.O. Box 942879	Fax: 916-323-3319
Sacramento, CA 94279-0070	

Field offices

City	Area Code	Number	City	Area Code	Number
Bakersfield	661	395-2880	San Jose	408	277-1231
Culver City	310	342-1000	San Marcos	760	510-5850
El Centro	760	352-3431	Santa Rosa	707	576-2100
Fresno	559	440-5330	Suisun City	707	428-2041
Irvine	949	440-3473	Van Nuys	818	904-2300
Norwalk	562	466-1694	Ventura	805	677-2700
Oakland	510	622-4100	West Covina	626	480-7200
Rancho Mirage	760	770-4828			
Redding	530	224-4729			
Riverside	951	680-6400	Out-of-State Field Offices		
Sacramento	916	227-6700	Chicago, IL	312	201-5300
Salinas	831	443-3003	Houston, TX	281	531-3450
San Diego	619	525-4526	New York, NY	212	697-4680
San Francisco	415	356-6600	Sacramento, CA	916	227-6600

The field offices listed are current when the publication was written. Field office contact information is available on our website and from our Taxpayer Information Section (see page 30).

9. Table: Proper Application of Tax

The table below is provided as a resource for determining the proper application of tax to sales and purchases involving Indians. This table is a summary of the information contained in this publication. For specific details regarding the proper application of tax to a specific transaction, please refer to the appropriate section in this publication.

Retailer	Purchaser	Location of Retailer	Transfer of Possession and Title	Proper Application of Tax	Page Number
Indian	Indian residing in Indian country	Indian country	In Indian country	Exempt from sales tax	13
Non-Indian	Indian residing in Indian country	Outside Indian country	In Indian country	Exempt from sales tax. Indian purchaser must pay use tax if property is used outside Indian country more than half of the time during the first 12-months of ownership	10
Non-Indian	Indian residing in Indian country	Outside Indian country	Outside Indian country	Sales tax payable by seller	10
Non-Indian	Non-Indian or Indian not residing in Indian country	Indian country	In Indian country	Sales tax payable by seller	14
Non-Indian	Indian residing in Indian country	Indian country	In Indian country	Exempt from sales tax. Indian purchaser must pay use tax if property is used outside Indian country more than half of the time during the first 12-months of ownership	14
Indian selling meals, food or beverage at eating and drinking establishments	Any	Indian country	In Indian country	Exempt from sales and use tax	14
Indian	Non-Indian or Indian not residing in Indian country	Indian country	In Indian country	Exempt from sales tax, but Indian retailer must collect and remit use tax from purchaser	13

EXEMPTION CERTIFICATE AND STATEMENT OF DELIVERY IN INDIAN COUNTRY**NOTE TO SELLER AND PURCHASER**

Tax does not apply when a retailer transfers ownership of merchandise (tangible personal property), including a vehicle, vessel, or aircraft to an Indian purchaser in Indian country, provided the Indian lives in Indian country. Please note that the Indian purchaser is not required to live on the specific reservation where ownership transfers.

Retailers located outside Indian country may sell to Indian purchasers who request delivery in Indian country. For a sale to qualify as a transfer of title (ownership) in Indian country, all of the following conditions must be met:

- The contract of sale or other sales agreement cannot transfer ownership of the item to the purchaser before the item is delivered in Indian country.
- The purchaser or purchaser's agent cannot take possession of the item before delivery in Indian country.

In addition, the retailer generally must deliver the merchandise by:

- Using the retailer's vehicle or other facilities of the retailer, or
- By mail, common carrier (UPS, FedEx, etc.), or contract carrier (a shipping, trucking, or transport company), when both of the following requirements are met:
 - The contract of sale or sales invoice must include a statement specifically requiring delivery in Indian country (for example, F.O.B. name of Indian reservation).
 - The goods are in fact delivered to the purchaser in Indian country.

When delivery does not take place as described above, ownership of the item being sold or purchased generally transfers to the purchaser outside Indian country. Please note: This is a general description of transfers of ownership in Indian country.. Specific rules may apply to certain types of sales and leases.

This document may be used to document that the sale was to an Indian purchaser residing in Indian country and/or to document that delivery occurred in Indian country. The section labeled "exemption certificate" may be used to document that the property was sold to an Indian purchaser residing in Indian country. Completion of this section in full by an Indian purchaser will provide the retailer with sufficient documentation that the property was sold to an Indian residing in Indian country. Additional documentation showing transfer of ownership and delivery of the property to the Indian purchaser in Indian country must also be obtained. If the property is delivered by facilities of the retailer, proper completion of the "statement of delivery" and "notary statement" may serve as documentation that transfer of ownership and delivery of the property to an Indian purchaser occurred in Indian country. If the property is delivered via common carrier or contract carrier, completion of the "statement of delivery" and "notary statement" is not required. Instead, the retailer should retain a bill of lading or other documents showing delivery in Indian country along with a contract of sale or other sales agreement specifically showing title passes to the Indian purchaser in Indian country.

For California sales and use tax purposes, an "Indian" is a person who is both of the following:

- An individual of American Indian descent, and
- Eligible to receive services as an Indian from the United States Department of the Interior.

EXEMPTION CERTIFICATE

(to be completed by purchaser)

When accepted in good faith, this exemption certificate may be used for the purchase of a vehicle, vessel, aircraft, or other tangible personal property. Please provide a complete description of the property purchased. If the property is a vehicle, vessel, or aircraft, please provide the year, make, model and identification number of the vehicle, vessel, or aircraft in addition to a description of the property purchased.

I hereby certify that the property described below is being purchased for use in Indian country and I am

_____ An Indian residing in Indian country; or

_____ An Indian organization in Indian country,

DESCRIPTION OF PROPERTY PURCHASED			
YEAR	MAKE	MODEL	VIN/LIC NUMBER
NAME OF PURCHASER (please print)		DRIVER LICENSE NUMBER OR OTHER STATE ID	DAYTIME TELEPHONE NUMBER ()
STREET ADDRESS		CITY	STATE ZIP CODE
PURCHASER'S SIGNATURE			DATE

NOTICE TO PURCHASER

Please note that use tax is due when the Indian purchaser who lives in Indian country does both of the following:

- Takes ownership and delivery of an item in Indian country, and
- Uses the item outside Indian country more than one-half of the time in the first 12 months after the sale.

If use tax applies, you must pay it directly to the BOE.

STATEMENT OF DELIVERY

(to be completed by seller)

NOTICE TO SELLER

If you are delivering the property to the Indian purchaser in Indian country by your own facilities, you may utilize this statement of delivery to document delivery in Indian country. It is recommended that you also complete the notary statement below to document delivery of the property to the Indian purchaser in Indian country. The notary statement may be completed by a California notary public or by a duly authorized tribal official or his or her designee. If you are delivering the property to the Indian purchaser in Indian country by utilizing a common carrier or a contract carrier, you do not need to complete the statement of delivery or the notary statement. Instead you should retain your bill of lading or other shipping documents as proof of delivery in Indian country along with your sales contract or sales invoice indicating ownership transferred in Indian country.

I hereby certify, under penalty of perjury under the laws of the State of California, that the below described vehicle, vessel, aircraft, or other tangible personal property was delivered to the purchaser in Indian country on the date and at the place stated below. If the property is a vehicle, vessel, or aircraft, please provide the year, make, model and identification number of the vehicle, vessel, or aircraft in addition to a description of the property.

TYPE OF MERCHANDISE, VEHICLE, VESSEL, OR AIRCRAFT			INVOICE NUMBER	
YEAR	MAKE	MODEL	VIN/LIC NUMBER	
NAME OF RESERVATION		ADDRESS (street, city, zip code)	DATE OF DELIVERY	
NAME OF SELLER		SELLER'S PERMIT NUMBER	DAYTIME TELEPHONE NUMBER ()	
STREET ADDRESS		CITY	STATE	ZIP CODE
I have delivered the above described tangible personal property to the purchaser named above				
NAME (please print)				
SIGNATURE			DATE	

NOTARY STATEMENT

(to be completed by California notary public or authorized tribal representative)

State of California

County of _____

On _____ before me, _____, personally appeared
(date) (name and title)_____ and
(name of seller or seller's representative)_____
(name of purchaser or purchaser's representative)

who proved to me on the basis of satisfactory evidence to the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature _____

Fraudulent use of this statement to avoid the payment of California sales and use tax can result in severe penalties.
**Notary Seal
(if applicable)**

CONSTRUCTION CONTRACT IN INDIAN COUNTRY EXEMPTION CERTIFICATE**NOTE TO SELLER AND PURCHASER**

Sales tax generally does not apply to the sale of fixtures to non-Indian contractors when the contractors furnish and install the fixtures in Indian country.

Generally, construction contractors are consumers of materials that are furnished and installed in the performance of a construction contract. As a consumer, tax generally applies to sales of materials to contractors who are not Indians. This is true even when the materials are delivered in Indian country and permanently attached to real estate in Indian country.

Under certain specific circumstances, a construction contractor performing a construction contract may qualify as a retailer of materials by meeting each of the following requirements:

- The contractor must be in the business of selling materials or other tangible personal property;
- The contractor must possess a valid seller's permit;
- The construction contract must explicitly provide for the transfer of title to the materials prior to the time the materials are installed, and must separately state the sales price of materials, exclusive of the charges for installation; and
- The construction contractor must provide a valid and timely resale certificate to its vendor.

When the construction contractor qualifies as a retailer of materials, the retail sale of the materials by the contractor may qualify as exempt from tax as a sale to an Indian purchaser in Indian country provided the following requirements are met:

1. The construction contract must separately state the price of materials, exclusive of the charge for installation.
2. The contract must specifically provide that ownership of the materials (title) will transfer to the Indian customer in Indian country prior to use or installation of the materials.
3. The materials must in fact be delivered to the Indian purchaser in Indian country.
4. The construction contractor must obtain an exemption certificate from its Indian purchaser.

This document may be used to document that the sale was to an Indian purchaser residing in Indian country and/or to document that delivery occurred in Indian country. The section labeled "exemption certificate" may be used to document that the property was sold to an Indian purchaser residing in Indian country. Completion of this section in full by an Indian purchaser will provide the construction contractor with sufficient documentation that the property was sold to an Indian residing in Indian country. The construction contractor must also have a construction contract separately stating the sales price of the materials in addition to documentation showing transfer of ownership and delivery of the property to the Indian purchaser in Indian country. If the property is delivered by facilities of the retailer, proper completion of the "statement of delivery" and "notary statement" may serve as documentation that transfer of ownership and delivery of the property to an Indian purchaser occurred in Indian country. If the property is delivered via common carrier or contract carrier, completion of the "statement of delivery and "notary statement" is not required. Instead, the retailer should retain a bill of lading or other documents showing delivery in Indian country along with a contract of sale or other sales agreement specifically showing title passes to the Indian purchaser in Indian country.

EXEMPTION CERTIFICATE

(to be completed by purchaser)

When accepted in good faith, this exemption certificate may be used for the purchase of fixtures and, provided the construction contractor meets the requirements outlined above allowing the construction contractor to act as a retailer of materials, materials that will be furnished and installed in the performance of a construction contract. Please provide a complete description of the property purchased.

I hereby certify that the property described below is being purchased for use in Indian country and I am

_____ An Indian residing in Indian country; or

_____ An Indian organization in Indian country,

DESCRIPTION OF PROPERTY PURCHASED			
NAME OF PURCHASER (please print)	DRIVER LICENSE NUMBER OR OTHER STATE ID	DAYTIME TELEPHONE NUMBER ()	
STREET ADDRESS	CITY	STATE	ZIP CODE
PURCHASER'S SIGNATURE		DATE	

STATEMENT OF DELIVERY

(to be completed by seller)

NOTICE TO SELLER

If you are delivering the materials or fixtures to the Indian purchaser in Indian country by your own facilities, you may utilize this statement of delivery to document delivery in Indian country. It is recommended that you also complete the notary statement below to document delivery of the property to the Indian customer in Indian country. The notary statement may be completed by a California notary public or by a duly authorized tribal official or his or her designee. If you are delivering the property to the Indian purchaser in Indian country by utilizing a common carrier or a contract carrier, you do not need to complete the statement of delivery or the notary statement. Instead you should retain your bill of lading or other shipping documents as proof of delivery in Indian country along with your construction contract indicating ownership transferred in Indian country prior to installation.

I hereby certify, under penalty of perjury under the laws of the State of California, that the below described materials, fixtures, or other tangible personal property was delivered to the purchaser in Indian country on the date and at the place stated below.

DESCRIPTION OF PROPERTY		INVOICE OR CONTRACT NUMBER	
NAME OF RESERVATION	ADDRESS (street, city, zip code)	DATE OF DELIVERY	
NAME OF SELLER	SELLER'S PERMIT NUMBER	DAYTIME TELEPHONE NUMBER ()	
STREET ADDRESS	CITY	STATE	ZIP CODE
I have delivered the above described tangible personal property to the purchaser named above			
NAME (please print)			
SIGNATURE		DATE	

NOTARY STATEMENT

(to be completed by California notary public or authorized tribal representative)

State of California

County of _____

On _____ before me, _____, personally appeared

(date)

(name and title)

_____ and
(name of seller or seller's representative)_____
(name of purchaser or purchaser's representative)

who proved to me on the basis of satisfactory evidence to the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature _____

Fraudulent use of this statement to avoid the payment of California sales and use tax can result in severe penalties.
**Notary Seal
(if applicable)**